Appendix C. Summary of Scoping Comments

One change was made to this scoping summary on the basis of a comment received from the public. One of the letters received during scoping contained numerous comments that the BLM attributed to the individual's employer, the University of Wyoming. The comment letter, however, clearly stated that the comments were those of the author and did not necessarily reflect the views of the University. Accordingly, we have deleted references to the University of Wyoming as the source of those comments in this summary of scoping comments.

Introduction

As of July 2003, the Bureau of Land Management (BLM) received more than 8,300 comments in response to the Advanced Notice of Proposed Rulemaking and the Notice of Intent. Most of the 8,300 comments were form letters expressing opposition to the BLM making any changes to the existing regulations that were passed in 1995. We received approximately three dozen letters containing substantive comments from interest groups and state and Federal agencies. In many instances, the comments submitted by individuals and interest groups duplicated the comments of "like-minded" organizations. Some comments referenced the previous changes to the grazing regulations as either the "1994" or "1995" regulatory changes. They are the same.

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting and 25 people offered testimony. Around 150 people attended the Reno, Nevada, meeting and 25 offered testimony. Approximately 50 people attended the Albuquerque, New Mexico, meeting, with 35 individuals providing testimony, and approximately 30 people attended the Washington, D.C., meetings, where five persons gave testimony.

The topics, in order of the number of comments received, are listed as follows:

1. Authorizing temporarily locked gates on public lands.
2. Establishing Reserve Common Allotments.
3. Sharing proportional title to range improvements.
4. Considering the social, economic, and cultural factors in NEPA analysis.
5. Acquisition of water rights.
6. Extending authorized temporary nonuse from 3 to 5 years.
7. Eliminating certain nonpermit violations.
8. Modifying the appeal process.
9. Considering adding a fee schedule for certain administrative actions.
10. Clarify what actions the BLM will take if we determine rangeland health standards are not being met.

1.0 Definitions

1.1 General comments regarding definitions

The Nevada Department of Agriculture commented at the Reno public scoping meetings that the BLM should not change its present definitions and should maintain the interpretations as close to the original meanings as they are in the Taylor Grazing Act.

The State of Arizona Game and Fish Department asked why theBLM proposed changing the definitions in the regulations. The department said they found BLM's intent in making these regulatory changes unclear; however, it supported revisions and clarifications that would effectively and efficiently accomplished the goal of attaining healthy rangelands and support multiple use of public lands including, benefits to fish and wildlife resources.

The Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council asked why the Department believes it is necessary to change any of the definitions that weren't changed in 1995.

1.2 Section 4100.0-5 Definitions

1.2.1 Active use

A consortium of environmental and conservation groups (Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council) jointly commented that the term "conservation use" could have been removed administratively without the expense of a rulemaking effort. The group commented that it could not identify other necessary or warranted changes to this definition because the BLM was too vague about its intentions. Several commenters asked the BLM not to revoke conservation use permits.

1.2.2 Authorized use

The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) asked the BLM to provide for the maximum amount of flexibility when considering the terms "nonuse," and "reduced use" in our definition of "authorized use." It asked the BLM to allow nonuse for 3 years for reasons other than resource management. After 3 years the group wants the BLM to consult with the preference holder to determine how Federal AUMs could be made available to qualified applicants who are engaged in the livestock business. It commented that the BLM should do this by issuing either a temporary permit or a reallocation under the criteria in the regulations. It also asked the BLM to clarify whether Federal AUMs in nonuse should be made available for active use after 3 years.

The consortium of environmental and conservation groups asked why the BLM is proposing to change this definition if it was not considered in the 1995 rulemaking. The groups commented that "Adopting the claims advanced in the PLC case is inappropriate, illegal, and limits BLM's ability to adjust livestock numbers and use for the benefit and protection of other users' uses or resources of the public lands in accordance with the goals and mandates of FLPMA and PRIA."

1.2.3 Base property

The consortium of environmental and conservation groups said the Department of Interior already addressed these issues in the 1994 regulations and it asked why the BLM believes they must be changed now.

1.2.4 Grazing lease

The consortium of environmental and conservation groups commented that the existing definition is taken from the TGA and should not be changed. It commented that it is inappropriate to link this definition to a particular number of livestock and the BLM should link numbers to preference because this process can identify and reveal real obstacles to improved management and improved conditions.

1.2.5 Grazing permit

The consortium of environmental and conservation groups commented that the BLM addressed this and other definitions during the 1995 Range Reform efforts and it asked how the BLM justifies changing them now, so soon after that effort.

1.2.6 Grazing Preference or Preference

The NCBA and the PLC asked the BLM to replace the term "permitted use" with the term "preference" wherever it occurs in the existing regulations because the term "preference," as used in the Taylor Grazing Act (TGA), was intended by Congress to provide a preference level of Federal AUMs of livestock forage to ranchers who qualified for grazing permits and leases.

The NCBA and the PLC also commented that the term "preference" means the sum total of active-use AUMs and any suspended nonuse AUMs. They asked if the BLM is considering this term in this context. They asked if the BLM intended to continue recognizing that permittees and lessees have an incentive to improve livestock management practices, and to improve rangeland conditions where possible by reactivating part or all of their suspended nonuse.

The consortium of environmental and conservation groups commented that the term "preference" is taken directly from the Taylor Grazing Act and that the BLM should not change it. It commented that the definition should not be linked to a particular number of livestock because it interferes with the BLM's ability to manage public lands pursuant to PRIA and FLPMA. It further commented that "permitted use" is properly determined by a land use plan and should remain as an indicator of livestock numbers allowed on a particular allotment.

1.2.7 Monitoring

General comments: The BLM received few comments pertaining to the definition. However, it received many comments advising the BLM how to conduct monitoring and what the results of these monitoring efforts should be. The livestock industry generally believes that more thorough monitoring will benefit the industry and vindicate them from allegations that livestock grazing is responsible for degrading public lands. The environmental and conservation communities urge increased monitoring because they believe monitoring will support their long-held belief that livestock grazing is degrading public lands.

The consortium of environmental and conservation groups alleges that after 1995, the BLM changed the way it monitors resource damage on public lands because it did not have the budget or resources to carry out required monitoring. The groups commented that this caused the BLM to delay remedial actions resulting in additional damage to public lands, and indefinitely stalled true environmental range improvements. It also commented that the BLM's return to the pre-1995 policy of "no data, no action" will block needed improvements and would be completely inconsistent with true stewardship.

The Public Lands Council and the National Cattlemen's Beef Association commented that data collection must be consistent and that the BLM should prepare an annual report on monitoring activities and make that information available.

The Oregon Natural Desert Association commented that monitoring is vital to BLM's success in land management actions. It commented that the definition of "monitoring" should recognize the importance of—and require the collection of—measurable, repeatable, quantitative information. It said the BLM relies on "drive-by" narratives, not by applying professional scientific procedures and standards.

The Nevada Department of Agriculture commented at the Reno public scoping meeting that the BLM must clarify how it will monitor results of trend studies and how that information will be used to increase AUMS on a particular allotment.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that vegetation monitoring will ensure that long-term range conditions and trends are stable or improving, enhance the resource for future generations, provide positive economic returns, and stabilize the range livestock industry and the culture of the vital human resources of New Mexico.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it recognizes the importance of long-term monitoring when it supports the grazing program and establishes sustainability. It urged the BLM to consider data from a study pertaining to monitoring in preparation by the National Cattlemen's Beef Association and the Public Lands Council; however, it gave no other details or specifics of that study.

1.2.8 Reserve Common Allotments

The BLM did not receive any comments pertaining to a definition of Reserve Common Allotments.

See Section 4.1 for discussions of Reserve Common Allotments.

2.0 Changing the regulations to clarify present requirements and to allow better rangeland management and permit administration

We are considering the following changes:

2.1 Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans

The Public Lands Council (PLC) and the National Cattlemen's Beef Association (NCBA) generally supported the BLM's proposed changes and provided extensive and substantial comments pertaining to all aspects of the BLM's proposed criteria. In addition, it submitted several additional provisions it wants the BLM to address in this rulemaking.

The consortium of environmental and conservation groups commented that the

fact that a permittee or lessee has a loan should not guarantee that the permittee or lessee has a right to an automatic renewal of his or her permit or lease, nor should it guarantee that any particular number of livestock can be run on the permittee's or lessee's allotment.

The Center for Biological Diversity (CBD) commented that permits should not be used as collateral for loans, because permits are not the legitimate property of the permittee. It said permits should include terms and conditions specifically preventing their use in this manner. It also commented that other methods, such as allowing competitive bidding for permits or leases, would remove the incorrect perception that permits are a property interest. The CBD commented that Section 4130.9 should be deleted because it illegally recognizes the use of permits and leases as collateral.

One individual commented that the BLM should delete Section 4130.9 because grazing permits are not legal property interests and treating them as such skews real estate markets and increases pressure on rangelands and encourages range managers to serve individual interests while diminishing economic benefits of healthy rangelands not priced in any market and not easily considered. (The Western Watersheds Project submitted identical comments on this provision.)

An environmental group commented that this provision shields permittees who are bad stewards or who have borrowed against their permits in an illegal attempt to make livestock use the dominant use on the public lands. The group said the TGA, FPLMA, and PRIA require that public lands be managed for multiple uses.

2.2 Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease

The Environmental Protection Agency (EPA) commented that it supports giving preference to applicants who promote wildlife habitats, water quality, healthy riparian zones, and encouraging native vegetation because these are important factors and should be an integral part of BLM's criteria for issuing permits.

The Oregon Natural Desert Association (ONDA) commented that the present regulations on these issues clearly direct the BLM to provide detailed information to the public about any problems the BLM perceives. It commented that, when considering changing the regulations, the BLM should include the following provisions clarifying that persons will not qualify for a grazing permit if:

1. They have failed to comply with grazing permit terms and conditions, especially when: utilization levels.

2. They repeatedly trespassed.

3. They failed to maintain exclosures or other fences.

The State of Arizona Game and Fish Department supports this considered change and believes the BLM should not change any of the grazing regulations that would diminish the requirements to maintain a record of satisfactory performance.

A commenter said the courts have found that individuals who hold preference rights on BLM grazing allotments must be engaged

in the "livestock business." The commenter said the TGA stipulations have been so diluted that groups or associations can qualify for an allotment preference right even though they are not actually engaged in the livestock business. The commenter said the BLM must revise the grazing regulations so grazing permits are only issued to bona fide livestock operators and allotments are used for legitimate livestock grazing purposes.

Representatives of the Western Watersheds Project commented that this section does not need clarification. It wants the BLM to consider the following:

1. Removing livestock from areas unsuited for grazing.

2. Replacing the present grazing fee formula with a system of competitive bidding to ensure compliance with the mandate in 43 U.S.C. Section 1701(a)(9) that the government obtain fair market value for public resources.

The Utah Farm Bureau Federation commented that the BLM should reinstate the pre-1995 definition of "grazing preference" because Range Reform eliminated permittees' rights to additional forage within their preference amounts even when it became available. The Federation commented that the BLM's 1995 regulation change let the BLM reduce the number of AUMs historically held under grazing preference on allotments during periods of drought or in response to appeals for expanded wildlife use. The Federation commented that it is now exceedingly difficult for ranchers to recover their historical permitted grazing use after the cuts have been made.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports requiring a permittee to be engaged in the livestock business to qualify for a permit.

One commenter stated that only those parties legitimately engaged in the livestock business should be allowed a grazing preference. The commenter believes that the Secretary's Four C's approach on the local level is the correct way to provide incentive for proper management. He stated that when communities agree on a management plan everyone benefits.

A commenter said the BLM should allow nongrazing parties to buy and hold a grazing permit for the conservation use or to improve the health of range lands or improve water quality.

2.3 Clarifying the provisions addressing grazing preference transfers

An environmental group commented that the BLM should not allow preference transfers and that issuance of a permit to a new permittee is a new permit issuance, not a transfer. the group commented that issuance of all new permits or reissuance of existing permits should be open to competitive bidding and occur only after full compliance with NEPA.

The CBD commented that the BLM should not allow transfers of grazing preference. It commented that issuing a new permit to a new permittee should not be considered a transfer and wanted permit issuances to be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuance.

An individual commented that grazing preferences should not be transferred and, before issuing or reissuing any permit, the BLM must ensure full public disclosure to comply with NEPA, FLPMA, and any other

environmental protections required by other law or regulation.

Great Old Broads for Wilderness commented that the BLM should not transfer preference for permits and that the permitting process should be open to competitive bidding and that issuance of permits to a new permittee should be through a new permit, not a transfer, and that permits should be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuing a permit.

A commenter said the BLM is incorrect regarding the transfer of "preference right" versus "transfer of the grazing permit" because the BLM already has the nondiscretionary requirement to transfer the preference right to qualified applicants. The commenter said that when the preference is transferred, the new permittee should be entitled to graze under the same terms and conditions as the immediately preceding term permit until the BLM issues a decision and, allowing for appropriate administrative appeal, changes the terms and conditions of the permit.

The Western Watersheds Project commented that "preference" should not be transferred. It commented that when a permit is issued to a new permittee it is being "issued" not "transferred." It also commented that the BLM must ensure a full public disclosure and compliance with NEPA, FLPMA, and any environmental protections required by other law or regulation before issuing or reissuing any permit.

2.4 Reinstating an earlier provision that BLM and permit holder may share proportional title to certain range improvements

Generally, many commenters who opposed the considered changes expressed particular opposition to livestock operators sharing title to range improvements. Most of the commenters who supported the BLM's considered changes stated that sharing title to range improvements could improve an operator's ability to secure funding to continue operating.

Several commenters, including The Sierra Club and the consortium of environmental and conservation groups, opposed sharing title to range improvements because they believe it would allow the BLM to confer private property rights to permittees operating on public lands. The groups commented that "ownership of all such developments and improvements must remain in the public domain because the permittee is only an individual or corporation allowed by the public to use public lands."

The CBD commented that the BLM should not change the existing regulation because it said that it supported the 1995 regulations that clarified that permittees do not have a property interest in Federal permits when they build range improvements on Federal land.

The Association of Rangeland Consultants supported reinstating the pre-1995 provision allowing BLM and the permit holder to share title to certain range improvements because they think it is an incentive to good land stewardship.

The ONDA opposed changing this provision so soon after the 1995 revisions. It

cites the TGA and other court cases which, it said, demonstrate specifically that a permit to graze on public lands does not entitle the permit holder to any rights on public lands.

The Columbia River Basin Inter-Tribal Fish Commission (a coalition of the Confederated Tribes of the Umatilla, Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe) opposed sharing title to range improvements because this provision could allow property rights to be established on public lands that could interfere with transferability of permits.

The Matador Cattle Company, Dillon, Montana, supports this provision and commented that incentives like sharing title provide a better way for implementing and maintaining range improvements than punitive actions.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments and cited case laws that they say support their opposition to sharing title to range improvements.

The State of Arizona Game and Fish Department commented that if this provision is introduced, the BLM must ensure that wildlife and wildlife-related recreational interests are considered and addressed.

The Montana Wildlife Federation opposed sharing proportional title to range improvements unless they are short term and the permittee intends to remove them.

The NCBA and PLC strongly urged the BLM to revise Subpart 4130 to read as follows:

"Title to structural or removable range improvements will be shared by the United States and the cooperators in proportion to the amount of their respective contributions to on-the-ground expenses of initial construction."

The NBCA and PLC said the BLM should amend Section 4130.3-3 Range improvement permits in the existing regulations to read:

"When the permittee or lessee agrees to provide full funding for construction, installation, modification, or maintenance of structural or removable range improvements, the permittee or lessee will hold title to those improvements authorized under this section. The permittee or lessee will control livestock ponds, wells, or pipelines when their construction is authorized under this section. The permittee or lessee may enter into an MOU with BLM to allow the use and maintenance of the improvements by activities other than livestock grazing."

An individual commented that the Supreme Court approved the 1995 changes to the regulations. It said the BLM is trying to place the economic interests of a small number of permittees and licensees above public interests and above the goal of managing the multiple resources and values of public lands. It commented that the BLM is disregarding FLPMA's mandates without considering the relative scarcity of the values involved or weighing the long-term benefits to the public against short-term benefits to the permittees. (The Western Watersheds Project submitted duplicate comments regarding this provision.)

The New Mexico Farm and Livestock Bureau supports shared title to range improvements and, in particular, co-ownership of range improvements or ownership by permittees who fund their own improvements with no contributions by the government.

The Nevada Farm Bureau (NFB) commented at the Reno public scoping meeting that the NFB's public policy position encourages actions to expand private development and ownership of stock water and Federal land. It said this policy is important for increasing benefits for

enhanced resource conditions as a result of maximum livestock distribution for expanded water development projects. It also said that providing ranchers with the opportunity for developing water resources on Federal lands expands the resources available for improving resource management.

The Western Watersheds Project commented that it opposes sharing title to range improvements because allowing permittees to "own" improvements may result in misunderstandings between permittees and the BLM over whether protective actions taken by the BLM constitutes a "taking" of property. It said these situations would involve great expense to the public.

The Utah Farm Bureau Federation commented that farmers and ranchers who pay for and construct range improvements should have an ownership interest in them, and should be able to list them as an asset on a producer's balance sheet. The Federation commented that little of the Federal money that is earmarked for range improvements goes toward on-the-ground improvements and there are presently no incentives for cooperation. The Federation commented that shared title to range improvements would give permittees incentives to construct and maintain range improvements on Federal lands.

The Custer Rod and Gun Club commented that it opposes sharing title to range improvements and that the BLM should retain ownership, thereby guaranteeing flexibility in the grazing management of the public lands.

The Conservation Roundtable of Billings Montana opposes this provision because physical improvements are permanently attached to the public lands and, therefore, ownership must be held and owned by the public land management agency.

The American Farm Bureau Federation commented that sharing title to range improvement would provide co-ownership and permittees with the incentive to construct and maintain range improvements of federal lands. The federation commented that "permittees operating on the allotments are in a better position to maintain those improvements than BLM personnel with limited time on the ground and limited funding."

The National Association of State Departments of Agriculture (NASDA) commented that allowing permittees or lessees to retain ownership of their portion of permitted range improvements provides incentives for permittees or lessees to invest funds in the improvement of Federal land. The Association commented that permittees and lessees should be compensated for, or allowed to retain, ownership of their portions of the investment.

Animal Alliance opposes sharing title to range improvements because it is concerned that the BLM would have to bear the high cost of buying out the permittee or lessee if the BLM must remove them from their allotment.

The New Mexico Farm and Livestock Bureau commented that ranching on public lands is the fourth largest contributor to that state's economy, and reinstating ownership of range improvements would stimulate sustained growth and stability for New Mexico by recognizing and rewarding the custom and culture of livestock production.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that it supported sharing title to range improvements because the long-standing livestock industry is the fourth largest sector in New Mexico and, therefore, must receive incentives to continue the industry's sustained growth and sustainability.

The Montana Farm Bureau commented at the Billings public scoping meeting that it supported sharing title to range improvements because it would provide incentive for range improvements.

A commenter at the Billings public scoping meeting said he supported shared title to range improvements because it will improve public land for everyone, not just the permittee.

A commenter at the Reno public scoping meeting said he supports shared title to range improvements because it provides incentive to operators. He commented that the pre-1995 system worked and ranchers "should get some of that back."

The California Farm Bureau commented at the Reno public scoping meeting that shared title to range improvements gives operators incentive to put "sweat equity" and their own dollars into improvements on their range so they can show a balance sheet to a banker when they have to justify those expenditures.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meetings that range improvements need to be owned, at least in part, by a permittee. They said ranchers invest time and money in developing improvements that benefit wildlife and livestock and they support the provision to share title as it existed before rangeland reform.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that it supports proportionally sharing title to range improvements and if the operator invests 100 percent of the cost associated with an improvement, then the operator should receive title to that improvement.

A commenter at the New Mexico public scoping meetings said he was concerned about the number of changes the BLM is proposing. He commented that he owns a ranch in the area but does not run livestock. The commenter said sharing title to improvements for the purpose of livestock grazing does nothing for other users of the land and he does not believe it is appropriate to reward permittees for making changes on public lands that are not advantageous to other land use purposes.

The consortium of environmental and conservation groups commented that a provision giving operators title to range improvements is unjustified and will interfere with the BLM's ability to take necessary action to comply with FLPMA's mandate of resource protection.

The Conservation Roundtable said ownership of physical improvements that are permanently attached to the public lands (pipelines, wells, reservoirs, and others) should be retained by the land management agency because such improvements are important to multiple uses of the land. It also commented that policies that propose other alternatives should assess how private ownership of the improvements affects the ability of the agency to transfer grazing privileges from one permittee to another, and the cost and effects to the public for the use of those lands.

The Northern California Resource Advisory Council said the "proposed rules" subordinate public property rights, benefit private interests, and violate the public trust doctrine.

A commenter from Montana opposed sharing title to range improvements on BLM lands because in Montana the practice limits the state's ability to consider other applicants for grazing permits. The commenter said shared title is a burden to track and gives existing permit holders an advantage over anyone else who may apply for a grazing permit.

A commenter at the Reno public scoping meeting said that most of the BLM's proposed changes were unnecessary and had nothing to do with conservation. The commenter said that the BLM is proposing to give away private property rights and livestock facilities.

A commenter opposed sharing title to range improvements because he believes it is bad public policy to permit anyone to establish private property rights on the public's land. The commenter said if the BLM implements this change it would lead to takings litigation and result in the BLM having to impose additional management prescriptions to protect public lands.

A commenter said permittees should be expected to participate in development of worthwhile investments that will improve and health, wildlife, and livestock values and provide a return on their investment. The commenter stated that livestock operators shouldn't be expected to invest without reasonable assurances they will be able to recapture a fair return on their investment.

A commenter said that the BLM should hold full title to all improvements because the TGA grants permittees perpetual benefit of their permit and improvements as long as they manage the resources responsibly. The commenter stated that permittees have renters' rights and no more. The commenter said a permittee should own title to temporary range improvements as long as they are removable or portable.

2.5 Clarifying that BLM will follow state law with respect to the acquisition of water rights

Nevada State Senator Dean Rhodes supports "allowing states to return to the favored, traditional three-way system, as it existed prior to the 1995 regulation changes." The Senator states that the plain language of the regulation and Nevada's water laws provide for a three-way system allowing the BLM to obtain stock water permits in the name of the Federal government.

Senator Rhodes commented that joint permits or permits that are issued only in the name of the range user are no longer possible in Nevada and the Federal regulation seems to require the BLM to acquire stock water rights exclusively in the name of the United States. He believes this approach precludes a range user from holding the water rights solely in the user's name, even if the user was fully responsible for the development of the water rights and putting the water to beneficial use.

The Senator also commented that as a result of the 1995 changes made to the grazing regulations the Nevada Legislature is considering introducing legislation urging the Secretary to amend this specific regulation and remove the requirement that stock water rights must be acquired in the name of the United States.

The Northwest California Resource Advisory Council recommended that the BLM consider that the government should hold water rights associated with livestock grazing allotments for the benefit of the livestock permittee and other beneficial uses .

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that the BLM need not change its regulations because the regulations clearly state the requirements and parameters under which "...any such water right is to be acquired, perfected, maintained, and administered in the name of the United States."

The CBD commented that the BLM should not change the existing regulation because Section 4120.3-9 already allows

water rights that are acquired to be subject to state law where applicable. It commented that the regulations should be strengthened to require the BLM to assert and use reserved and other existing water rights, with priority given to wildlife and recovery of T&E species.

The Association of Rangeland Consultants commented that the BLM should clarify and emphasize that it intends to follow state law with respect to the acquisition of water rights.

The State of Arizona Game and Fish Department commented that it does not understand the need to change the present regulations and that the BLM should continue to file for water rights in a way that is compatible with multiple-use management, including fish and wildlife purposes.

The ONDA commented that the BLM should emphasize that water rights do not constitute a claim for compensation if a permit or lease is canceled to devote lands to another purpose. It commented that the BLM must make this provision consistent with Hage v. United States, 51 Fed.Cl. 570 by reaffirming that permits are only a license to use the land, not an irrevocable right of the permit holder.

The Montana Wildlife Federation opposes BLM's considered changes to acquiring water rights because the BLM should hold all water rights needed for appropriate uses and management of public lands.

The NCBA and PLC commented that the BLM should revise and amend Section 4120.3-9 Water rights to read as follows: "BLM will follow state water law to provide livestock water on Federal lands."

The Western Watersheds Project commented that the BLM should not change the present regulations except to require that any water rights acquired by the BLM on public lands in the course of administering grazing permits shall include specific water right protection, including compliance with the Clean Water Act.

The Conservation Roundtable of Billings, Montana, commented that the BLM should prohibit the construction of any range improvement if it enables a permittee to meet state law requirements for acquiring a private water right on public land. It commented that the BLM should hold, under state law, all water rights needed for all appropriate uses and management of the public lands.

The National Association of State Departments of Agriculture (NASDA) commented that the use and appropriation of water rights by any entity, including the Federal government, must be in accordance with state law. The Association commented that any proposal, either administrative or legislative, must not create an expressed or implied reservation of water rights in the name of the United States and that the Secretaries of the Interior and Agriculture must follow state law regarding water ownership.

The Utah Farm Bureau Federation supports state control of water rights because it prevents encroachment by government agencies on private water rights and stock-watering rights issued to individual permittees when they construct water developments on private land. The Federation asked the BLM to amend the existing regulations to allow water rights for livestock grazing to be acquired in the name of the permittee, as was allowed before 1995.

A commenter at the New Mexico public scoping meetings said, "In New Mexico, BLM's attempt to acquire water rights will be opposed because in that state water is property and according NMS 72 Water Law—Property Rights, the Federal government is only permitted to have water as per their specific reservation related to the purpose of reservation."

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it is critical for the BLM to follow state water law and state water regulations in order to maintain continuity.

The Montana Farm Bureau commented at the Billings public scoping meeting that the BLM must clarify its intention regarding BLM following state law with respect to the acquisition of state water rights.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meeting that any water rights should be acquired through the process established before 1995 under state water law.

The consortium of environmental and conservation groups commented that the BLM was too vague in the ANPR and it doesn't know what types of modifications the BLM is considering. It said there is no need to change this regulation because if the BLM owns the water rights on the land it controls, then the BLM specifies how those rights are to be used. The consortium comments that if the BLM can justify changing the existing regulation, then the BLM must consider the following:

- Ensure changes will not limit the BLM's ability to manage the lands surrounding the water right even when it results in suspending or reducing grazing and the BLM devotes the land and water to other purposes.

- When states have statutes precluding the BLM from holding a state water right, the BLM must continue to assert a right to acquire, possess, and maintain water rights on its land for appropriate purposes.

- The EIS must contain a complete analysis of the possible environmental consequences of any change to the existing rule.

A commenter stated that the BLM should adhere to the pre-1995 livestock water rights on public lands.

A commenter said the BLM must not concede all authority over water rights to states because states won't properly manage water resources. The commenter asserted that states would drain or degrade natural watersheds to support short-term livestock interests. This commenter also said he opposed provisions that "give away the Federal government's water rights" by conceding to state's rights. The commenter states that the BLM must retain the ability to assert Federal water rights, which may be more important for public purposes such as fish and wildlife habitat and other public uses.

2.6 Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations

General Comments: The majority of comments the BLM received, from both supporters and opponents of other proposed changes, expressed opposition to BLM's consideration to allow temporarily locked gates on public lands. The most widely expressed concern was that ranchers would indiscriminately prevent the public from gaining access to public lands. Several commenters said this was already occurring on public lands in some western states. Some supporters of BLM's proposed grazing rule changes stated that they opposed the locked

gates provision because they feared livestock operators would be blamed for making the BLM close off access to public lands. The BLM can authorize locked gates in specific instances. This provision would not change the present regulation, and therefore, the BLM has decided to remove this provision from consideration in the proposed rule.

The Northwest California Resource Advisory Council (RAC) commented that it had concerns about "limiting public access to public lands" and it unanimously agreed that the BLM already has the authority to order emergency public land or road closures where necessary.

Several commenters from Idaho stated that unauthorized locked gates on BLM land is a long-standing, significant problem in that state and they believe the provision will aggravate the situation because more access to more public lands will be prohibited.

The Columbia River Basin Inter-Tribal Fish Commission commented that it opposed locked gates on public lands because in it would interfere with access for the public and could restrict Tribal access to reserved resources on public lands. If there are problems with gates being left open, the BLM should investigate other avenues for addressing the problem, such as posting signs and imposing fines.

The Wyoming Game and Fish Department opposes authorizing locked gates on public lands because the BLM must consider the public's access when it is associated with fish and wildlife recreational pursuits—often a significant part of local economies and lifestyles. The Department also commented that access to public lands is necessary for adequately managing big game populations.

The Montana Wildlife Federation (MWF) opposes BLM's consideration to allow temporarily locked gates on public lands. The Federation stated this would be inconsistent with the BLM's own intentions to consider the effects. The Federation also stated that agriculture is presently second in economic importance to recreational pursuits. Loss of access for hunting and fishing recreationalists would negatively affect Montana's economy. The Federation commented that present grazing fees are so low as to be considered a subsidy given to a few. The MWF asked the BLM to consider implementing competitive bidding for grazing leases to bring fees closer to fair market value.

The NCBA and PLC do not support the provision to authorize locked gates on public lands. They believe the issue is more appropriately addressed in other regulations guiding the BLM and state and local governments regarding roads on public lands.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments opposing locking gates on public lands because permittees merely have a revocable license giving them a privilege to graze public lands. The groups believe that permittees have no right to deny the public access to public lands.

Idaho State Parks and Recreation opposed allowing locked gates on public lands and commented that private property owners already have the right to lock gates on their own lands and therefore the ability to lock gates on public lands is a bad idea and should not be considered in the proposed regulations. The department suggested, "Although some public land grazers complain that recreationalists leave gates open allowing animals to move into unauthorized areas, open gates are problems with many solutions." They commented that the BLM could improve efforts to educate the public on the importance of closing gates. Gates that are easy to close tend to be used more responsibly.

The Idaho Department of Fish and Game (IDFG) said the BLM should abandon this consideration because the department received numerous complaints and concerns from the public who adamantly oppose this provision. In 2002, IDFG conducted a survey of 3,000 individuals who identified access to public lands as one of the top five issues they thought IDFG should address.

The State of Arizona Game and Fish Department opposes the provision to authorize locked gates on public lands and states the public should not be denied access to public lands unless all other methods to resolve this have been exhausted.

The ONDA commented that authorizing locked gates on public lands would be inappropriate and runs counter to the entire concept of public lands. It cited the present regulations, in which they said the Secretary made it illegal for any person to obstruct free transit through or over public lands by force, threat, intimidation, signs, barriers, or locked gates. The group states they see no compelling reason why private property rights or livestock operations should possibly override the public interest in having access to public lands.

The Sierra Club, Rocky Mountain Chapter, is concerned that locked gates will allow bad permit managers to shield the consequences of their practices from public view. It said access questions should be decided on the basis of a public process in which the most important parameters to be considered are critical wildlife habitat, watershed protection, and protecting recreational use for the long term.

An individual opposed the provision to propose locked gates on public lands because it would aid permittees and not improve rangelands or public values.

The Nature Conservancy commented that the BLM already has the authority to close areas temporarily to public use to protect public health and resources. It stated, "Beyond these exceptions, we believe that all interests should have equal access to public lands."

An environmental group commented that the principles of the Four C's and multiple use require the public to have access to all allotments to gage the condition and management of the public lands.

Great Old Broads for Wilderness commented that giving ranchers control over access to public lands and ownership of structures on public lands complicates range management and may violate a number of laws.

The consortium of environmental and conservation groups commented that it opposes locked gates on public lands for the following reasons:

1. The prohibition against locking gates on public lands and blocking access to public lands is a statutory requirement with which the BLM cannot interfere. The BLM's authorization of such an action erodes the agency's mandate under FLPMA to manage the public lands for "Multiple use and sustained yield."

2. The EIS must clearly define what constitutes "temporary" and the environmental and recreational consequences resulting from such a closure.

3. If the BLM allows a permittee to block access to public lands, it must provide a mechanism to allow some publics, namely state or county employees and the BLM, to have access to those lands to monitor activities occurring on them.

Water Access Association, Inc., of Montana opposed allowing ranchers to lock

gates and said that the public wants more access to public lands, not less.

The Public Lands Foundation urged the BLM to consider canceling a grazing permit if the permittee prevents the general public, or company holding a right-of-way permit to cross public lands, from obtaining lawful access to the public lands without written permission from the Field Office Manager.

The Conservation Roundtable of Billings, Montana, commented that the EIS should assess the effect on the public's use of the land if permittees abuse their privilege to close public lands. The group recommends that the BLM cancel a grazer's permit if the grazer impedes the public's lawful access to public lands.

The Sierra Club commented that it opposes any provision that would impede or prevent the public's access to public lands.

The Taxpayers for Common Sense commented that it opposes any alterations that would limit public access to Federal grazing lands or reduce the opportunity for public input into the oversight and management of these lands.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public scoping meeting that they opposed locking gates and preventing access to public lands at any time. The Commissioners said they would consider supporting the provision if the permittee needed to lock a gate to take some kind of action beneficial to ranching action.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports allowing temporary locked gates at certain times, particularly during lambing and calving or to enable the operator to protect his or her private property.

A commenter at the New Mexico public scoping meetings said he is concerned about the BLM's proposal to restrict public access to public lands.

A commenter at the Reno public scoping meeting said his primary concern was the BLM's consideration to allow locked gates on public lands.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it believes allowing the BLM to lock gates on public lands sends the wrong message to the public and creates ill will. It said it is not appropriate for grazers to try to lock out a segment of the public.

A commenter cited "Idaho Code" (I.C. 40-203(1)) and said this proposed provision might be contrary to that law as it pertains to public rights-of-way that include those that furnish public access to state and Federal public lands and waters.

A commenter at the Billings public scoping meeting said that he supports locking gates to protect property on public lands because livestock are often killed or stolen during hunting season.

The Northern California Resource Advisory Council said the "proposed rules" would diminish public access and public enjoyment of BLM lands.

A commenter opposed locked gates placed on public lands by private landowners. By lessening access, the BLM will contribute to more destruction of fragile dry public lands in the West.

A commenter said that when ranchers acquire grazing rights on public lands they know the issues and constraints that go along with grazing on public lands. The commenter said ranchers know that the public has access to the land and this may be problematic because the landowner must request that the BLM or law enforcement deal with recreational user violations, just as recreational users can request that BLM law enforcement deal with overgrazing or other permittee violations.

A commenter said public access to public lands will not harm grazing operations because ranchers are only there as the result of BLM's balanced approach to public land use.

A commenter opposed limiting public access to public lands because, although the BLM may desire to protect private lands and livestock operations, the public pays taxes to own those lands and keep those lands in good condition. The commenter said locked gates equals taking away public lands and, even when temporary, gives added support to private landowners and agribusiness.

A commenter opposed allowing locked gates on public lands and says ranching concerns routinely post "No Trespassing" signs on public lands and deny access to other public users.

A commenter opposed locked gates on public lands because it would prohibit public access and set aside public resources for exclusive use.

A commenter said public access to public lands in Idaho is already hampered and stopped by illegal locks placed on gates.

A commenter said the grazing industry pays a pittance to graze livestock on public lands and that does not give it a right to damage watersheds and destroy the natural biodiversity, nor does it entitle the grazing industry to exclude other users from public lands.

A commenter opposed the provision and says he has been verbally abused and threatened by a private landowner while on public lands. The commenter said many ranchers work to improve the land; however, many treat their inherited leases as if they were private property.

A commenter said the BLM intends to give ranchers control of the public's right to access public lands. The commenter said that property owners were responsible for protecting their own lands but that should not include blocking access to public lands. The commenter stated that private property owners are already illegally locking the public out of public lands in Idaho, where he resides.

A commenter supported temporary locked gates because "locking up specific areas for wintering big game, nesting sage-grouse, and other critical values are best defined by the local residents and should be given consideration. Illegal access to private land through BLM land is a big problem in some areas and BLM should retain the right, with local agreement to block access, only for a short time where this is an issue."

A commenter opposed allowing locked gates on public lands and commented that by allowing ranchers to block access to public lands the BLM will be reverting to the times when the dominant use of the public lands was livestock grazing, while recreational, environmental, and ecological concerns were ignored.

A commenter said any decision to limit access to public lands should be avoided except for specific reasons that have undergone public scrutiny and public debate. He said locking the public off of their public lands only benefits private livestock operators.

A commenter opposed allowing livestock owners to lock gates to public lands because "BLM lands belong to the public and BLM's Organic Act guarantees the public's access to these lands the same as the ranchers who are renting space."

2.7 Clarifying which nonpermit-related violations BLM may take into account in penalizing a permittee

The Sierra Club commented that permit violations need to have consequences and permittees must follow all applicable environmental laws, including the Endangered Species Act and the Clean Water Act. It also commented that failure to comply with the laws should be grounds for terminating a grazing permit or lease.

The Nature Conservancy commented that the BLM must retain its present authority to cancel, suspend, or deny renewals of permits when permittees violate laws or regulations when the violation is related to grazing use.

A commenter said only permit violations that have been upheld by the OHA, IBLA, or a Federal court as a final agency action should be used in determining any future penalties against grazing permittees.

An environmental and conservation group commented that the BLM should not change the 1995 provisions that expanded the list of prohibited acts. It said these include violations of Federal environmental, natural, and cultural resource laws.

The EPA commented that the BLM should retain the ability to revoke a permit in situations where nonpermit violations, such as Clean Water Act violations, have resulted in significant adverse environmental effects.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that failure to comply with applicable Federal environmental laws such as the ESA should be grounds for terminating a grazing permit or at least significantly reducing permitted use.

The Sierra Club, Rocky Mountain Chapter, commented that it would support the BLM's authority to deny permits to those who abuse environmental and other laws, whether on public land or otherwise, because other government entities often place similar conditions on contractors and the BLM should continue to do the same.

The NASDA commented that it supports the provision to remove and reduce the number of violations that could result in a permittee losing their permit because they believe the 1995 grazing regulations created a "double jeopardy issue."

The Utah Farm Bureau Federation commented that the BLM should not have authority to take action against a permittee for actions that do not violate the terms or conditions of his or her permit. The group also commented that any such violation should be addressed within the confines of the particular law or regulation that allegedly was violated and not by taking an action against a grazing permit. The Federation also commented that permittees should not be at risk of losing their permit for violation of any law or regulation outside of the specific scope of the permit.

The Oregon Cattlemen's Association commented at the Reno scoping meeting that the BLM should not be allowed to take action against permittees for actions that do not violate the terms and conditions of the permit itself.

The Montana Farm Bureau at the Billings public scoping meeting commented that his group opposes BLM's taking action against a permittee for actions that do not violate the terms and conditions of the permit.

The consortium of environmental and conservation groups commented that they strongly oppose rolling back these provisions because the present rule provides incentives for permittees to be good stewards of the public lands as well as of their livestock.

A commenter said removing this provision would avoid "double jeopardy" issues.

A commenter supported the provision, stating that only violations directly related to the grazing permit itself should be a consideration for cancellation of a permit.

A commenter said the BLM should strengthen the provision for determining and pursuing permit and nonpermit violations that violate environmental laws that were passed to protect public resources on public lands.

The Western Watersheds Project commented that the only change the BLM should make to the present regulation is to amend it by deleting 43 CFR. §4140.1(a)(2).

2.8 Considering ways to streamline the grazing decision appeal process

The ONDA commented that the present grazing decision appeal process takes an inordinate amount of time, is largely ineffective, and does not actually stop an action from going forward. The ONDA commented that they support streamlining timelines and procedures. They are concerned that streamlining the process will eliminate the public's ability to participate in appealing grazing decisions.

The Grand Canyon Trust commented that although there may be legitimate reasons to streamline the grazing appeals process, no changes should be made that diminish the public's ability to participate in, or challenge, the decision-making process.

The CBD commented that BLM must revise the regulations to provide broader public access to administrative remedies for grazing decisions. It commented that the BLM should also provide a simpler appeals process giving State Directors authority to suspend ongoing grazing or stay the proposed action if there is evidence of harm to resources by ongoing or planned grazing in the project record.

The Sierra Club opposed streamlining the permitting process because it doesn't think the BLM ever denies a permittee the privilege to graze. It commented that the permitting process should remain open to public scrutiny and that the BLM should seek additional ways to involve the public in making determinations for public lands.

The Columbia River Basin Inter-Tribal Fish Commission commented that although the Tribal consultation and trust responsibility obligations are separate from the general public's input process, Tribal concerns are often relayed through that same public input process. The Tribes are concerned that this provision could limit or eliminate the public's, and their own, ability to participate in the management of public lands.

The Sierra Club's Rocky Mountain Chapter commented that the BLM is making worse an already cumbersome appeals process that neither remedies nor alleviates environmentally damaging agency grazing decisions. It asked the BLM to limit what it considers a nuisance of appeals; saying it would be better for the agency to improve opportunities for public participation in the decision-making process.

The Western Watersheds Project commented that the BLM should allow broader public involvement and make it easier for the public to obtain an administrative remedy for unsound grazing decisions. It commented that the rules should provide a simpler appeals process to the appropriate BLM State Director who should have express authority to suspend grazing use or stay a proposed action if the administrative record shows that ongoing grazing has harmed or is harming the resources, or if such

harm is likely to occur if the proposed action goes forward.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments that generally supported the BLM's efforts to ease a bureaucratic process. But they are concerned that this could limit the public's ability to participate in grazing administration and policy decisions. It also commented that the BLM should strive to increase the public access to administrative remedies such as suspension of ongoing grazing if evidence exists of harm to natural resources from grazing.

The Sky Island Alliance recommended that the BLM allow broader public access to administrative remedies for grazing decisions and asked the BLM to consider providing a simpler appeals process for State Directors with authority to suspend ongoing grazing or stay the proposed action if evidence of harm exists.

A commenter at the New Mexico public scoping meetings said he is concerned about BLM's proposal to streamline the appeals process because he thinks the BLM will continue to restrict engagement of broad public interest in issues regarding public lands. He commented that it is inappropriate to reduce the number of people who are allowed to appeal rulings.

The Matador Cattle Company, Dillon, Montana, supports the provision to streamline the appeals process and recommends that the BLM require appellants to post a bond when they appeal a decision.

The consortium of environmental and conservation groups commented that the BLM is attempting to restrict the right of their organization, their members, and other members of the public from participating in appeals affecting their use, enjoyment, or organizational interests in the public lands. It commented that such restrictions are inconsistent with FLPMA and are inconsistent with the Secretary's "Four C's."

A commenter said they opposed streamlining the grazing appeal process because it took years and much effort to develop a process that is highly effective, efficient, and enjoys a high degree of accuracy. The commenter also said that streamlining the grazing appeals process would give the petitioner a more advantageous position and give the BLM less management ability to work for common ground in grazing decision appeals.

A commenter supported the provision and the importance of the Secretary's "Four C's." The commenter said the BLM should look to local collaborative groups to provide the main voice for directing management goals on BLM lands within their communities.

A commenter said this provision would remove the general public's ability to participate in decisions on public lands. The commenter also said the provision would hamper the public's ability to participate and comment on BLM grazing decisions for public lands.

A commenter said the proposed revision could make the grazing appeals process a "private club" and that the appeals process and grazing decisions are "the public's business."

2.9 Extending the time that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs

In general, most commenters supported allowing the BLM the flexibility to authorize temporary nonuse for longer than 3 years. Many commenters, however, misunderstood

that the BLM is seeking to authorize temporary nonuse when the permittee or lessee requests it for personal or business reasons or for resource protection or rehabilitation, not for BLM-initiated actions.

The Sierra Club commented that nonuse of grazing permits for recovery purposes should be determined by the accomplishment of range health or conservation goals. It recommended that the BLM consider recovery periods of 5 to 20 years when necessary; when the land has recovered, the BLM should reduce the number of AUMs to keep those lands in a healthy condition.

The CBD commented that the BLM must have the authority to grant nonuse for the entire 10 years of a permit or longer or until resource conditions have fully recovered, without needing to make land use plan amendments.

The consortium of environmental and conservation groups commented that Section 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration should be amended because the BLM has had 8 years since Rangeland Reform but has not assessed thousands of allotments to determine if standards are being met or guidelines followed. The BLM is adding another layer of delay by failing to require prompt corrective action. It commented that, at most, a 6-month grazing period might be appropriate in certain limited situations.

The Forest Guardians, Animal Protection Institute, and Sinapu supported extending nonuse for conservation purposes and commented that the timeframe should be extended beyond 5 years if necessary and should be tied to reestablishing rangeland health, rather than a standard number of years.

The Association of Rangeland Consultants commented that it approved extending the time period that the BLM may approve nonuse of forage from 3 to 5 years in the interest of conservation and good land stewardship.

The ONDA commented that a period of nonuse for recovery of damaged rangelands should be tied to actual recovery rather than across-the-board number of years; that is, the period of nonuse should be determined by accomplishment of range health or conservation goals and should be tied directly to standards relevant to ecosystem health and recovery. It also stated that if an area has been returned to health, AUMS should be reduced so those public lands will remain healthy.

The State of Arizona Game and Fish Department commented that the BLM's performance reviews must clearly state that failures to meet standards and guidelines for rangeland health or failing to achieve management objectives would result in the following BLM actions:

- A permit might not being renewed,
- Authorized use may be decreased, or
- The allotment may be reclassified.

The Wyoming Game and Fish Department supported expanding nonuse to 5 years to allow regeneration of native rangeland and habitat conditions because 5 years would allow the BLM more flexibility to achieve multiple-use benefits, and would be useful when used in connection with Reserve Common Allotments.

The State of Arizona Game and Fish Department supported the BLM's provision to extend the current period for nonuse of forage for resource improvement because these actions take longer in the arid Southwest than other parts of the country. The Department also commented that the BLM should consider approving

nonuse of forage "until stated objectives are met" which, they said, may be more appropriate to a specific time period in some parts of the country.

The Idaho Department of Fish and Game supported extending the nonuse time period from 3 to 5 years and said they would support a longer period for nonuse—as long as 10 years when necessary.

The Owyhee Cattlemen's' Association asked the BLM to clarify what effects this provision may have on state water rights where beneficial use must be made.

The Nature Conservancy (TNC) commented that the provision is good for resource improvement purposes because of the present drought conditions throughout the West. They believe the present 3 years is insufficient to allow for range improvement following prescribed fire, wildfire, drought, or other range improvement treatment.

The Sierra Club, Rocky Mountain Chapter, recommended that the BLM allow a longer resting period when it is necessary and commented that recovery times should be based on the landscape in question.

The Utah Farm Bureau Federation commented that the provision is necessary because Utah is now entering its 5th year of drought and extending the period of nonuse from 3 to 5 years will provide greater flexibility for producers to protect and enhance forage resources.

The Matador Cattle Company, Dillon, Montana, commented that it generally supports the provision but stated that after 3 years the ground "should be disturbed to maintain health and vigor and desirable plants."

The New Mexico Farm and Livestock Bureau commented that it supported the BLM's provision to extend nonuse from 3 to 5 years because it provides greater flexibility to producers and to the forage resource. The bureau commented that this would provide the BLM and the permittee or lessee greater flexibility to address situations that required the nonuse in the first place. The bureau also commented that it does not want this provision to become a substitute for "conservation nonuse."

The New Mexico Farm and Livestock Bureau stated concerns about potential conflicts between New Mexico State water law and the BLM's provision. The bureau said that, according to New Mexico water rights, nonuse of water for more than 3 years jeopardizes the holder's water rights. The bureau also stated that it would oppose the 5-year extension unless this issue is addressed.

The Western Watersheds Project commented that the BLM should be authorized to grant nonuse for 10 years or until resource conditions have fully recovered. It said that the BLM should not have to develop an amendment to the applicable resource management plan because FLPMA, or RMPs, and the rangeland health regulations do not allow grazing that causes or perpetuates unhealthy rangeland conditions. It also commented that the BLM's Planning Regulations should be revised to allow allotment cancellations and retirements by the BLM.

The Montana Farm Bureau at the Billings public scoping meeting, said it supported extending the time period for nonuse from 3 to 5 years but the proposed rule should be drafted so that this provision will only apply to people engaged in the livestock business as required by the TGA.

An individual at the Reno public scoping meeting commented that temporary nonuse from 3 to 5 years is acceptable, but cautioned that this was not enough time to significantly improve range health in the arid West.

The County Commissioners, Garfield County, Utah, commented at the New Mexico public scoping meetings that the BLM should consider making this provision applicable

only to those who are engaged in the livestock business as mandated by the TGA.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meetings that extension of the 5-year period should be considered on a case-by-case basis because recovery often takes longer than 3 years.

The consortium of environmental and conservation groups commented that rangelands cannot be restored in 3 years and will not be solved by extending the time limit to 5 years because the real problem on BLM lands is that the permitted use exceeds actual use and grazing capacity. It commented that long-term voluntary nonuse is used improperly and that the BLM should reduce or suspend the permitted use and bring permittees and lessees into conformance with the BLM's legal obligations.

A commenter supported the extension of temporary nonuse to 5 years and said the BLM should not be limited to 5 years. She said BLM should consider approving nonuse for as long as necessary to rest and rehabilitate the resource.

A commenter said extending permitted nonuse from 3 to 5 years because 2 additional years of nonuse provides better habitat for wildlife and could lead to more appreciable utilization by other groups, especially hunters, presently the largest user group on public lands.

3.0 Considering amendments related to changes in permitted use

3.1 Creating provisions reemphasizing consideration of social, economic, and cultural effects, in addition to the ecological effects, of Federal actions to ensure compliance with NEPA

The Sierra Club, Rocky Mountain Chapter, commented that the BLM and other Federal agencies often neglect public lands by placing too much emphasis on keeping local economies alive just because they exist. It commented that the BLM's social analysis must clearly state the costs to the public for continuing nonsustainable grazing operations and the costs and benefits of continuing grazing on public lands.

The Grand Canyon Trust commented that the ecological impacts of grazing are well documented and that the BLM should give these impacts its greatest attention. It commented that the NEPA exists to protect the environment and the Act is intended to ensure that environmental information is available to public officials and citizens before decisions are made and actions are taken in accordance with the best available scientific information. It also suggested that if the BLM wishes to place greater weight on the consideration of social and economic factors in the permitting process, the BLM

should require rigorous economic analysis including disclosing the true economic costs of public lands grazing to American taxpayers.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they opposed the BLM's provision to consider the social, economic, and cultural effects of Federal actions along with ecological considerations. The groups stated that NEPA does not justify protecting social or economic customs of ranchers at the expense of environmental degradation of public lands. The groups commented that although NEPA provides for consideration of historic, cultural, economic, social, and health effects of proposed actions, its primary goal is to require agencies to consider environmental consequences of their decisions to protect the environment. The groups asserted that any other application violates the intent of Congress in its creation of NEPA.

The CBD opposed any change to the present regulations regarding NEPA analysis.

The State of Arizona Game and Fish Department commented that social, economic, and cultural elements should be considered in NEPA analysis but the BLM should not reduce the evaluation or resolution of ecological impacts.

The Association of Rangeland Consultants supported any provisions that reemphasize effects on local social, economic, and cultural interests, while considering the ecological effects of Federal actions. It commented that this best serves the interests of conservation and good land stewardship.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meeting that NEPA requires that effects on social, economic, and cultural interests be considered in an EA or EIS. Their representative commented that livestock forms a vital basis for his county's rich cultural heritage and that this heritage should be considered in NEPA analysis and preserved.

The Utah Farm Bureau Federation commented that NEPA requires the BLM to consider economic and social effects in environmental impact statements and environmental analysis. The Federation stated that livestock grazing forms a vital basis for the rich cultural heritage of the West and asked the BLM to consider this heritage in any NEPA analysis and to preserve it.

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that the BLM should consider the fiscal effects on local governments before implementing any proposed grazing administration regulations or any alternative regulations.

The Nevada State Grazing Board, District N-3, commented that environmental organizations routinely use the ESA litigation to remove livestock from public lands, and the BLM should consider a provision requiring cooperative planning among affected interests at the allotment level, including the permittee, and the U.S. Fish and Wildlife Service if special status species are involved.

ONDA commented that NEPA is the basic national charter for protecting the environment and the Act's first and foremost purpose is to ensure fully informed decision making and to provide for public participation in environmental analysis and decision making. It also commented that NEPA neither requires nor justifies perpetuating environmentally damaging land use practices to protect the social and economic customs of a minority of subsidized public land users.

The Wyoming Game and Fish Department supported the BLM's provision to consider the social, economic, and

cultural effects from Federal actions especially if those effects might influence decisions associated with fish and wildlife recreation. The department commented that it is particularly concerned about the effects these rule changes might have on local economies and on recreational hunting.

The Sierra Club commented that commercial livestock grazing causes deterioration of the public lands, and is neither ecologically nor economically viable. It asked the BLM to consider the following issues when addressing effects of grazing on public lands:

1. Focus on the ecological effects of grazing.

2. Vigorously follow NEPA and emphasize sound biological and ecological science.

3. Consider social and economic factors only when biological and ecological effects are neutral.

4. Look at the long-term effects of grazing.

The Nature Conservancy commented that considerations of social, economic, cultural, and ecological effects are required in all documents prepared under NEPA, and stated that the BLM does not need to duplicate those requirements in the grazing regulations.

An environmental group commented that it opposed the BLM making any changes to the existing regulations. It opposed allowing social, cultural, and economic review to take precedence over environmental review because the NEPA process can assist managers in making decisions on the basis of understanding environmental consequences of decisions. It also commented that the BLM should take appropriate actions to protect, restore, and enhance the environment.

NASDA commented that as long as a "term grazing permit" is consistent with a land use plan that was developed within the provisions of NEPA, the permit should not be considered a major Federal undertaking requiring additional study or assessment under NEPA.

The Animal Alliance commented that it opposed any proposed changes that focus on the effects of the BLM's decisions on the social, economic, and cultural aspects of NEPA because such a change would place a rancher's social and economic concerns above environmental protection.

The New Mexico Farm and Livestock Bureau commented at the New Mexico public scoping meetings that social, economic, and cultural considerations must be conducted at the local community level. It said the BLM presently considers these issues only on a state and national level and not within the actual communities that are affected.

The Western Watersheds Project commented that no changes should be made to this provision because NEPA concerns for the human environment are clear, as are the BLM's own implementing rules and those of the CEQ. It said that reemphasizing these human impacts subverts NEPA's concern for ecological effects. It stated that giving such effects more emphasis in BLM's Planning Regulations increases the likelihood that the BLM will continue to place the economic and purported way of life interests of grazing permittees above public interests—specifically multiple-use resources and values for which the public lands are to be managed.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meeting that the BLM must make social, economic, and cultural observations and considerations on the local level, in small communities.

The consortium of environmental and conservation groups commented that the BLM should not include this provision in the proposed rule because the BLM already gives precedence to the social, economic, and cultural interests of ranchers over environmental considerations. The groups also commented that "seeking to protect the custom and culture of the western cowboy or to insulate the public land livestock industry from economic impacts is inconsistent with the resource protection mandates of FLPMA and NEPA."

A commenter said that the BLM's NEPA analysis of potential impacts to social, economic, and cultural elements must include the financial losses incurred by the below-market payments that operators make to the Treasury during the life of grazing leases. The commenter stated that the BLM is giving subsidies to ranchers as a result of below-market fees and these should be considered as an offset to potential or real social, economic, and cultural effects on grazing permittees.

A commenter supported the BLM's considerations because public land is best managed with local input and goals, and the effects on local social, economic, and cultural interests should be major considerations for NEPA compliance.

A commenter opposed the provision because the BLM is ignoring the environmental considerations of NEPA in favor of the social, economic, and cultural needs of a small special interest group. She said NEPA reviews should focus on environmental effects because the integrity of environmental review must be retained and other values—specifically economic, social, and cultural, should be considered at the decision-making stage.

3.2 Requiring a permittee or lessee to apply to renew a permit or lease

One commenter stated that when the permittee follows "the plan," and monitoring verifies that fact, a permit should be renewed automatically.

A commenter said that BLM Field Managers could show bias when considering applications for permit renewals and that requiring an operator to renew a permit can cause undue hardship and create excessive paper work for BLM staff. The commenter stated that the BLM should consider renewing permits based on an operator's past performance.

A commenter said that when the BLM determines a permittee must reapply for a grazing permit or lease, it should recognize the requirements at 5 U.S.C. Sec. 558(c) and the BLM must inform the permittee of the process for reapplication so the permittee can take full and timely advantage of the requirements detailed in the Administrative Procedure Act.

The CBD commented that the BLM should not allow automatic renewals of leases or permits because applications should be issued through competitive bidding to qualified stockowners.

The Western Watersheds Project commented that the BLM should never allow increased livestock use of public lands and, therefore, 43 CFR §4110.3-1, should be deleted.

3.3 Determining what criteria BLM will consider before approving increases in permitted use

The State of Arizona Game and Fish Department commented that the BLM should consider changing its criteria for approving increases in permitted use. The department asked that such approvals be based on the best available scientific monitoring data and any increases should be approved only when forage and other habitat objectives have been met. The department also commented that the present rule seems to allow only increases, and it wants the BLM to also consider decreases in permitted use when necessary.

A commenter recommended that permittees be allowed to increase production on their allotment by 25 percent or more if they exercise "wise management." They also commented that such increases could be allowed in normal precipitation years.

The CBD commented that the BLM should delete §4110.3-1 because it should never approve increased grazing use. It said that scientific studies and agency reports show that the arid West has been chronically overgrazed by livestock and is no longer suited for grazing use.

3.4 Considering whether to amend the provision stating when BLM will implement action that changes grazing management

The ONDA commented that the present grazing Standards and Guidelines must be retained because it actually demonstrates whether permittees and lessees are meeting, not meeting, or significantly progressing toward meeting, land health standards.

The Association of Rangeland Consultants said the BLM must clarify how to implement actions to change grazing management if it determines that land health standards are not being met. The Association commented that the present provision limits the amount of time the BLM has to develop thoughtful solutions incorporating improved timing and sequence of grazing treatments.

The Public Lands Foundation commented that ownership of all permanent improvements placed on public lands must be held by the land managing agency. It commented that a "recent Supreme Court ruling" upholds BLM's authority to take title improvements even when they are made cooperatively with a permittee.

The Northwest California Resource Advisory Council (RAC) asked if the BLM intends to change the land health standards and livestock grazing guidelines developed by the RAC. This RAC wanted the EIS to clearly identify any portion of the land health standards and livestock grazing guidelines that would be affected by any regulation change.

The State of Arizona Game and Fish Department commented that any changes to this regulation must emphasize the need to complete evaluations and determinations to meet multiple-use objectives and rangeland health standards as identified in the present regulations.

The Idaho Department of Fish and Game commented that in some areas of Idaho the land is not recovering sufficiently and the slow pace of improvements in rangeland health and fish and wildlife habitat could contribute to listing more species under the ESA.

The EPA commented that it supported the BLM's authority to amend permits whenever

the BLM determines the permittee is not meeting or progressing toward meeting land health.

The Nature Conservancy commented that this provision would affect the BLM's attempts to restore and rehabilitate rangelands. It said it supported granting a reasonable time for permittees to make adjustments to their allotment management, but it stated that livestock operators must still meet rangeland health standards.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they opposed this change and said that the BLM must establish timeframes to ensure that assessments are actually completed in conjunction with NEPA analysis at the time of permit renewals. The groups also commented that permits must not be renewed if standards are being continually violated.

The Nevada Department of Agriculture commented that 1 year is adequate time to achieve range improvements or change livestock distribution and show improvements. The department, however, said it doubts that the BLM can respond to new rangeland improvements within a year and get through all necessary review processes, analysis, and agricultural clearances.

The Western Watersheds Project commented that if the BLM determined that a permittee has misrepresented compliance within the terms and conditions of his or her permit or lease, the BLM should institute an automatic 25 percent reduction in season of use and numbers of livestock by the following season of use.

4.0 Considering adding new provisions to the regulations

4.1 Establishing and administering a new concept called Reserve Common Allotments

General Comments: Second to the "locked gates" provision, this issue received the most attention and comments. Opponents expressed concern that Reserve Common Allotment (RCAs) would encourage and reward poor range stewardship by allowing operators to beat down the lands in their lease or allotment and then simply move to another area of public land and overgraze that one too. Many livestock operators and industry representatives commented that they were concerned that ranchers might be removed from their allotments to create an RCA, especially if they have worked hard to keep their allotments in good condition. Several stated that they tentatively support the concept of RCAs, but they expected the BLM to clearly explain how RCAs will be created and managed in the proposed rule. Some commenters stated that they had extensive knowledge about the availability of forage within their respective districts and that they were unaware of any area, not presently being grazed, where there was enough forage to create and sustain an RCA.

The Columbia River Basin Inter-Tribal Fish Commission commented that RCAs could provide incentives for permittees to rest their allotments, but those RCAs must be held to a higher ecological standard than other grazing allotments. The Tribes commented that healthy range standards should be exceeded, necessary improvements made, and stocking levels decreased on RCAs. The Tribes cited examples in the Columbia Interior Basin, where PACFISH and INFISH plans require higher standards over much of the public land.

Sportsmen for Fish and Wildlife commented that the BLM should place allotments and forage in reserve as Reserve Common Allotments, or consider voluntary allotment restructuring to increase the numbers of wildlife on BLM lands.

The CBD believes RCAs are unnecessary because the BLM already has authority to move ranchers to any allotments that are in personal preference nonuse. It also commented that the existing regulations already provide "alarmingly" broad latitude for all sorts of grazing use through temporary permits, ephemeral use, crossing permits, special permits under 4130, and subleasing.

The Grand Canyon Trust commented that the BLM should not adopt rules that assume there are ungrazed allotments available for use as RCAs and that do not provide a mechanism for creating reserve allotments. Mr. Hedden also commented that allotments that are presently managed for uses other than for livestock grazing—for example, environmental restoration or recreation—should not be used as RCAs.

The New Mexico Farm and Livestock Bureau expressed the following concerns about RCAs:

- RCAs could result in reduced livestock numbers resulting in loss to the state's economic base.
- The BLM must clarify how RCAs will be used to restore rangeland to optimum

health, including how they are used in response to emergencies and natural disasters such as fire and drought.

- New Mexico State water law prohibits extended periods of nonuse without forfeiture of water rights.

- Who holds the water rights on RCAs?

- Will the BLM force permittees off their allotments to create RCAs?

A commenter supported the concept of RCAs but is concerned about abuse by "anti-livestock grazing" BLM employees. The commenter said the BLM's unstated goal is to reducing livestock on public lands, and voluntary programs such as RCAs must consider maintenance of a viable ranch operation for the permittee.

The Wyoming Game and Fish Department commented that RCAs could allow flexibility in distributing livestock, support needed range management projects, and provide adequate posttreatment rest from grazing. The department commented that broad-scale implementation of reserve common allotments is a critical and necessary element for creating a successful grazing management program.

A spokesperson from the Western Watersheds Project opposes RCAs because he states no lands that are presently suitable for grazing are ungrazed, although the vast majority of lands are unsuited to that use. He commented that implementing this proposal would depend on the following:

1. Increasing grazing on lands already grazed and likely degraded by that use.

2. Using pastures being rested from grazing that is contrary to the objectives of the government management plan.

3. Allowing grazing on tracts of presently ungrazed public lands.

The Western Watersheds Project also commented that the unavoidable effects of RCAs would be further ecological degradation of public lands and prolonging an unsustainable land use that is contrary to the mandates and policies of FLPMA and PRIA.

The State of Arizona Game and Fish Department supports the concept of RCAs with the following provisions:

- RCAs should support multiple-use objectives.

- RCAs should be available to permittees who are cooperating in range restoration efforts, including resting their allotments.

- Permitted use levels and seasons of use on RCAs should be consistent with the maintenance of healthy rangeland conditions and wildlife habitat.

- Terms and conditions for using RCAs should be clearly defined.

- The BLM should institute requirements on permittees to implement a rest–rotation system to qualify as eligible to use and RCA

The Idaho Department of Fish and Game commented that it supported the concept of RCAs because the new provision could encourage voluntary relinquishment of permits to establish RCAs. The department asked the BLM to reduce the number of AUMs and spread the remaining number across a larger area.

The NBCA and the PLC commented that they support the concept as long as the BLM and the operator agree that range conditions

warrant such an action. The groups said they are concerned RCAs could result in a loss of preference AUMs on public lands and asked the BLM to consider the following criteria to establish an RCA:

- Allotments for RCAs should be designated for a limited time.
- No more than 10 percent of AUMs within a district should be in use as RCAs at any one time.
- All decisions regarding allocations of RCA should involve permittees and grazing boards chartered by state or local governments.
- RCAs would be used to support and maintain the level and integrity of the grazing programs on the allotments within the area.
- The BLM should consider creating RCAs from other Federal lands not presently used for livestock grazing.
- Permittees should have priority to use RCAs that are located within the grazing district they presently use.
- The preference holders controlling the base properties must voluntarily offer their allotments for use as RCAs.
- RCAs must be attached to base property.

The EPA commented that RCAs could aid in the recovery of vegetation and reduce soil compaction from intense grazing on allotments. The EPA also recommended that the BLM confine grazing to areas that are capable of sustaining grazing and eliminate grazing in areas that are significantly degraded or do not have the adequate amount of resources to support grazing.

The Utah Farm Bureau Federation commented that RCAs are reminiscent of past Federal actions that resulted in grazing being prohibited in Dinosaur National Monument in Utah. The Federation wants RCAs to be developed from vacant or unused allotments. It commented that it would support the provision if it provides flexibility to both the BLM and the livestock producer. The Federation said it would oppose taking existing permits from operators to create an RCA and said the BLM must develop a fair and equitable process for allocating forage under this new program.

The Nevada State Grazing Board, District N-3, commented that it supports the development of RCAs but is concerned that administration changes could affect how the program is managed. The Board asked the BLM to ensure that forage used by someone other than the permittee is truly available. The Board urged the BLM to consider agreements with other land managing agencies (USFS, BOR) where lands are now grazed and could be used during times of drought or periods of needed rest.

The Sierra Club, Rocky Mountain Chapter, commented that although RCAs might benefit overgrazed or damaged rangelands, they won't fix the basic problem that the BLM allows grazing on lands that are not suitable for grazing.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they oppose developing RCAs because they won't end overstocking and overgrazing on lands that are unsuitable for grazing. The groups commented that they are concerned that creating RCAs could create a "sacrifice zone" by damaging grazing lands that are in relatively better condition. The groups commented that the BLM should reduce stocking rates on degraded allotments and not subject vacant allotments to the same uses

that degraded them in the first place.

The ONDA commented that it opposes RCAs because they will create public land grazing commons for federally permittees and recreate a long-recognized problem in public land management known as "the tragedy of the commons." It commented that an abundance of public land grasses has encouraged continued overstocking and overuse and there will always be severely damaged allotments struggling to recover. It asked the BLM to encourage ranchers to purchase and develop their own private land grass banks and to avail themselves of market system opportunities for their business needs like any other business in America.

The consortium of environmental and conservation groups commented that it is inappropriate for the BLM to create RCAs from allotments donated to the BLM for the purpose of long-term rest because it may limit future donations. It said potential donors might not want to donate their allotments if it cannot be assured that the BLM's goal is long-term rest of those allotments. It wants the BLM to "buy out" allotments to create RCAs because grazing costs the taxpayers significantly, would not reduce administration costs, and would not increase resource protection on public lands. It also commented that the BLM should address the following issues in the proposed rule:

- How do the regulations limit implementation of this concept?
- How will the BLM choose allotments?
- Are there suitable allotments presently in reserve?
- How will the BLM account for the loss of benefits these allocations will have to other uses?
- What are the BLM's criteria for establishing allotments?
- How will the BLM manage these allotments to prevent resource degradation?

The Nature Conservancy commented that it supported the concept of RCAs for restoration purposes and cited similar concepts called "grass banking" that it said are used by private landowners to restore large landscapes.

The American Farm Bureau Federation commented that it supported the concept of an RCA because such a program could provide flexibility for the BLM and permittees. The Federation asked the BLM to include the following four issues in any proposed rulemaking:

- RCAs should be created from vacant allotments, not by removing permittees from their existing allotments.
- RCAs could be created from lands that are not being utilized by a permittee.
- The BLM must have the full consent of the permittees and must compensate them for the use of their allotments as RCAs.
- The BLM must devise a fair and equitable process for allocating forage under the reserve common allotment program.
- The BLM should also consider if more than one permittee at a time could use an RCA.

The Public Lands Foundation commented that it supports the concept of RCAs and asked the BLM to observe similar programs administered by the Department of Agriculture, the Farm Service Agency's Conservation Reserve Program, and the

Grassland Reserve Program for their effectiveness.

The Conservation Roundtable of Billings, Montana, commented that it supports the concept of RCAs, and asked the BLM to implement safeguards to ensure that Reserve Common Allotments do not become grazing commons that the TGA is supposed to prevent.

The Animal Alliance commented that it opposed developing reserve common allotments because the BLM will allow permittees or lessees to move livestock onto areas that were previously allocated exclusively to wildlife.

The consortium of environmental and conservation groups and the Sierra Club commented that RCAs would not be a benefit particularly during droughts.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public scoping meeting that the BLM should not create RCAs by removing a permittee from an existing allotment.

The Federal Lands Committee and the New Mexico Cattle Growers commented at the New Mexico public scoping meeting that they are concerned about the BLM developing RCAs.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that RCAs could do a lot of good for the industry because they would relieve hardships on the small family businesses that make up the industry. It is concerned that RCAs will be taken from active permits at the expense of the operators trying to make a living. It asked BLM to consider acquiring these allotments through attrition or buyout rather than what is presently practiced, or through some other way that doesn't displace an operator.

A commenter at the Reno public scoping meeting said the BLM should consider allowing grazing on lands that are already held in reserve for other purposes. The commenter said the Sheldon and Hart Mountain Antelope Ranges are already reserved and the BLM should consider using those and similar areas as RCAs.

A commenter at the Reno public scoping meetings said he supported RCAs and also asked the BLM to consider developing areas such as the Sheldon and Hart Refuges as RCAs.

The California Farm Bureau commented at the Reno public scoping meeting that he supports RCAs because they could allow a permittee to take on long-term range improvement projects and accomplish these goals, as well as provide forage in emergency situations.

A commenter at the Reno scoping meeting that he supports RCAs if they are established by retiring permits and if they are to be grazed during times of harsh conditions, as in the case of fire.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that the BLM should develop RCAs from vacant and retired allotments.

A commenter asked whether a permittee who was unable to use his or her allotment because it was degraded would have his or her permit revised or revoked, or would he or she instead be moved to an RCA.

A commenter supported the concept of RCAs as long as the BLM only uses vacant allotments or buys out allotments from willing sellers for that specific purpose.

A commenter asked how the BLM could create "extra" acres for an RCA when most of the public lands are already in a chronically overused situation.

A commenter said RCAs would not remedy the problem of overstocking or overgrazing public lands with insufficient forage and is concerned that this provision may create a new set of lands sacrificed to

replace already degraded lands.

4.2 Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority

Many commenters who opposed the changes the BLM is considering strongly urged the BLM to consider raising grazing fees to reflect "fair market value" for grazing livestock on public lands.

A commenter asked the BLM to determine a grazing fee based on the market value of the available forage and land available and whether multiple-use of public lands is practiced. The commenter says as a landowner he believes BLM grazing fees are so low they should be considered donations.

A commenter wants the BLM to implement a fee schedule for all appropriate and adequate administrative costs for applications and transfers because those who graze livestock on public lands should pay an additional amount beyond administrative costs for all incidental and indirect costs as well as other unanticipated costs.

The Idaho Cattle Association commented at the Reno public scoping meeting that the administrative fees the BLM is considering are inappropriate because ranchers spend more time and money on their allotments and improvements than BLM spends to regulate grazing activities. The commenter states that planting and fire suppression, fence maintenance, weed control, and ESA activities protecting water developments, would continue even if there were no grazing and that the public would still demand these values be maintained. He commented that fees must be kept minimal otherwise permittees, who are usually cash poor, would seek to avoid the fees that would lead to less effective range management.

The Western Watersheds Project commented that if the BLM were receiving fair market value for grazing privileges, and if FLPMA's fee formula weren't out of date, this rule would not be necessary. It recommended that the BLM initiate an analysis of increasing the grazing fee to actual market rates through a bidding process and minimal acceptable rates that are equal to the average cost per AUM of private land grazing leases in each western state.

General comments on issues not addressed in the ANPR and NOI.

The Northwest California Resource Advisory Council (NCRAC) commented that they were disappointed the Department did not consult with RACs prior to the public release of the proposed changes in grazing regulations and that the criteria appears to be from the "top down" and therefore seems contrary to the Secretary's "Four C's" philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative."
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism

for one interest group to the detriment of the general public and other stakeholders.

- Present grazing rules have been adjudicated and found in compliance with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said: "I do not like to see public lands and campgrounds full of cattle droppings."

A commenter stated that the BLM's present permit renewal process allows anti-grazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM's management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple use.

An environmental group commented that the BLM should modify existing regulations so that cancellations by the BLM are considered automatic revisions to the applicable land or resource management plans. It stated that the BLM should have authority to grant nonuse, until resource conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although it manages ranching properties in 11 western states, it can't comment on the considered changes until it knows the specifics of any changes the BLM is considering. It commented that it opposes any changes that would restrict organizations with multiple interests, such as the Nature Conservancy, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that the BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The PLF commented that the 1995 effort was a huge and costly undertaking and asked why the BLM was creating a new grazing policy so soon. It stated that it had followed BLM's implementation of the 1995 rules and was unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision, stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were determined to be necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture "sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt. The department said that most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, and increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provided little or no positive effects on the natural resources, livestock industry, or any other public multiple use."

The Nevada Department of Agriculture also asked the BLM to allow only trained BLM employees to be tasked with environmental monitoring and not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of

Billings Montana asked why the BLM was drafting new grazing regulations so soon after the huge effort undertaken in 1995. It commented that the proposed changes will result in the "old system of private control by the privileged over the general public's enjoyment of healthy functioning public lands." It asked the BLM to clarify the following elements of the Secretary's Four C's concept in the EIS:

- With whom is the BLM consulting?
- What is the consultation about?
- What does BLM mean by "community-based conservation?"
- What is the role of the general taxpaying public in "community-based conservation?"
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that the BLM must provide definitions for the following new definitions used in BLM's Press Release, and include them in any proposed regulations:

- Sustainable rangelands
- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want the BLM to add the following provisions to any proposed changes to the regulations:

1. Ensure that standards and guides are uniform, consistent, and rigorously applied on all BLM-administered lands.
2. Ensure that range health standards are being met. If not, the BLM should strengthen and enforce existing criteria.
3. Initiate performance-based contracts. The BLM has not adequately and consistently held permit holders accountable and generally renews permits on allotments that do not meet rangeland health standards and guidelines.
4. Develop new performance-based contracts with strong enforcement provisions that include consequences for failing to meet these requirements.
5. Establish performance-based incentives. There must be consequences for not achieving agreed-on conservation goals.
6. Do not allow stocking increases. When an area has recovered, AUMs should be adjusted downward to maintain the health of the land.
7. "Conservation partnerships" are a misnomer if the BLM's goal is simply to increase forage production and not to restore declining rangelands.

The Sportsmen for Fish and Wildlife commented that the BLM must consider the following issues in any proposed rule changes:

1. Adopt a rule that protects ranchers' existing rights and allows a free marketplace to solve conflicts between

wildlife and livestock. This can allow the BLM to meet the public demand for increased wildlife populations and increased recreation.

2. Allow allotments and forage or AUMs to be reallocated on a permanent basis for wildlife when a permittee voluntarily relinquishes the grazing preference back to the BLM.

3. Do not change the present regulations allowing for nontraditional individuals and corporations that own base property to hold grazing permits.

4. Allow permittees to choose to have their AUMs dedicated either to livestock or game herds.

5. Allow for nonuse and predisposition toward reallocation between the time a willing seller and buyer transaction is completed and the LUP is amended.

The Association of Rangeland Consultants (ARC) echoed the comments submitted by the PLC asking the BLM to consider addressing "exchange-of-use grazing agreements," citing an earlier provision in the grazing regulations that allowed outside allotment lands to be offered in return for equivalent reduction of the owner's grazing bill. It commented that in an exchange, the outside lands were then controlled by the BLM, which could bill the neighboring permittee for the capacity of those lands, thus allowing a permittee to benefit from his lands outside his allotment, and enable the neighboring permittee to pay for and add the capacity of those lands to his or her authorization. It also commented that this trade arrangement was eliminated when the words "in the same allotment" were inserted in 1995.

The ARC asked the BLM to consider reinstating "suspended-use" because the BLM interprets this definition as authorizing the elimination of all suspended-use from the records at the time of permit renewal based on a full allotment evaluation. It commented that this is an unjustified elimination of the base property qualifications that remains on the books in a suspended status.

ARC also commented that the BLM must address the "infamous 'F' clause" in 43 CFR 4130.2(f). They asserted this paragraph denies "due process and allows the BLM manager to determine terms and conditions capriciously and arbitrarily with no recourse." It said that due process and the right of protect should be reinstated in keeping with the regulatory tradition of fairness.

A commenter from the Montana Farm Bureau at the Billings public scoping meeting said that the BLM must clarify its provision pertaining to grazing preference transfers because when those transfers don't affect the environment, but are limited to paper changes, they should not be "subject to the need for documentation."

The California Farm Bureau commented at the Reno public scoping meeting that the BLM should consider expanding monitoring efforts to vacant and retired allotments in order to observe long-term trends when cattle are removed because this can provide credible evidence that the land is improving instead of relying on speculation.

The Idaho Cattle Association commented at the Reno public scoping meeting that "the BLM should consider performance-based stewardship contracts to demonstrate the validity of local information and input on how to manage range resources. If experience determines this is not a successful undertaking, however, it should not reflect badly on the operator. Ranch science is

an inexact science and good faith efforts should be considered." It also said the BLM should consider fuel load and fire effects when considering what criteria should be used when an operator requests increased permitted use, and said decreasing livestock numbers on public lands contributes to increased wildfires.

A commenter at the Reno public scoping meeting said that the BLM's definitions of citizen-based and community-based decision making seems to exclude the rest of the public from the rule-making process. She believes this means that decisions will be made between the BLM and the permittee and not include the public.

The New Mexico Cattle Growers Association and the Public Lands Council of New Mexico commented that BLM should reinstate Section 4 permits and reinstate district grazing advisory boards.

The State of Wyoming Game and Fish Department (WGFD) commented that it supports an adequate and meaningful grazing monitoring program and that BLM's present monitoring methods, consistencies in evaluation of monitoring results, and application of monitoring results into future grazing management are key items in support of a successful and defendable grazing management program.

A commenter at the New Mexico public scoping meetings said that she is concerned with the effects of oil and gas development on her grazing allotments because the BLM considers improvements made by oil and gas developers belong to the developers, and that oil and gas developers own their leases for as long as they continue to produce. The commenter said ranchers do not own their improvements and their leases expire after 10 years and the BLM should to treat ranchers equally with oil and gas developers.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that the BLM needs to adhere to its present management objectives on wild horses because although there are too many on the public lands, ranchers are being asked to reduce their AUMs. The BLM should reopen the WHBA to address this issue.

The Sierra Club commented that the BLM should be looking for ways to reward ranchers who accomplish 100 percent compliance for standards and guidelines for rangeland health. It said the BLM must take action against any permittees who fail to achieve compliance.

A commenter supported community-based conservation and citizen-centered stewardship because local residents have the greatest incentive and desire for conservation of the lands that surround where they live. The commenter wants the Secretary to give precedence to the comments of those who live in public land states who are most qualified to resolve problems. This commenter also wants the BLM to improve its business practices through local collaboration and seeking agreement within the communities and counties that have generated solid plans to enhance land health and sustainability. The person commented that the same practices should be given ample opportunity to succeed through more simplified business practices, and land health and wildlife populations are enhanced by proper grazing that is compatible with controlled recreation and proper planning.

Several commenters asked the BLM to address the following issues in the proposed rule:

- How to deal with noxious weed infestation.
- How to deal with the aftereffects of catastrophic wildfires on public lands.
- Increasing the listing of T&E species.

- Implement a program to voluntarily buy out grazing permits.

- Raise the present grazing fees to reflect market-based economics.

A commenter said court orders were the only means to justify a change to the existing regulations. The commenter also stated that the BLM should provide complete details and take full public comment, not just from industry representatives, before changes are made in the grazing regulations.

A commenter recommended that the BLM develop an incentive system, such as reducing grazing fees, to reward livestock operators for "doing a good job."

The American Farm Bureau Federation commented that BLM should consider the following issues in its draft proposed regulation changes:

1. The BLM should consider ways to further streamline procedures if certain actions are identified as CXs in the burdensome NEPA processes. They cited an example of permit transfers when a base property changes ownership or control and there are no deviations to the terms or conditions for the duration of the existing permit. They state that these actions have little or no environmental effects and there is no reason that these actions should be subject to NEPA.

2. Required Endangered Species Act Section 7 consultations can cause livestock permittees major problems and permittees should be included in these consultations with the USFWS instead of having their livelihoods affected in closed-door policy decisions.

3. The BLM should eliminate the subleasing surcharge imposed by the 1995 regulations.

The Taxpayers for Common Sense commented that fees the BLM charges for livestock grazing on public lands constitute an inappropriate expense for taxpayers and do little to encourage an individual's stewardship of grazing lands.

The NCBA and PLC recognize the Secretary's authority to apply a surcharge. The groups believe that adding a surcharge creates an unnecessary workload to the BLM's administration of permits and leases. They also commented that the surcharge creates an unfair financial and bureaucratic burden and prevents many young ranchers from being able to participate in Federal land grazing operations. They believe that elimination of the surcharge will help the BLM's directive to develop grazing policies that encourage family ranches to stay on the land and continue to contribute to local economies.

A commenter asked the BLM to change the regulations at Section 4130.7(a) to read as follows:

a) The permittee or lessee shall own and be responsible for the management of livestock that graze the public land under a grazing permit or lease.

The ONDA commented that the BLM did not mention permit retirements or relinquishment that, the group claims, are of considerable interest to conservationists, permittees, and BLM staff. The ONDA does not agree with the Solicitor's opinion that a "chiefly valuable" determination must be made before the BLM makes a land use decision allowing for the retirement of a grazing permit. It commented that if DOI intends to act in accordance with the Solicitor's memorandum, the chiefly valuable determination must occur on each and every acre of land within the land use planning area every time the BLM develops or revises

a resource management plan. It said that if the BLM adopts this policy, it could balance competing resource values to ensure that public lands are managed in a manner that best meets the needs of the American people.

The NCBA and PLC want the BLM to remove the term "interested public" from the grazing regulations because this broad level of public participation is more appropriate to the planning process, where decisions regarding resource allocations are made.

The NCBA and PLC want the BLM to incorporate "affected interest" as it was before 1995, to mean a party who has established in writing that it may be materially and economically affected by an agency decision. They believe that permit administration involving the contractual relation between the grazing permittee and the BLM should involve only other permittees within the same allotment as affected interests.

The NCBA and PLC want the BLM to limit the definition of "interested public" to mean a person or organization that has submitted a written request to the BLM to be provided an opportunity to be involved in the Land Use Plan for a BLM Field Area and whom BLM has determined to be an "interested public." The groups want applicants to provide information to the BLM demonstrating how their participation in the LUP development process would provide information or expertise that would otherwise not be available to the BLM.

The NCBA and PLC also want the BLM to amend Section 4120.2 paragraphs (a) and (c) to consider changing the definition of the term "allotment" to reinstate the phrase "Boards were established" that was removed in the 1995 changes. The groups commented that this change is justified by the requirement still contained in Section 8 of the PRIA whereby the Secretary is required to consult, cooperate, and coordinate with land owners involved in any boards created by states having lands or responsibilities for managing lands within an area to be covered by an allotment management plan. The PLC justifies this amendment because it believes that when Grazing Boards were eliminated, the BLM and livestock grazers lost an important tool for resolving conflicts and cooperating in resource stewardship.

The New Mexico Farm and Livestock Bureau commented that the BLM should remove "interested public" from the regulations because the 1995 regulations allowed anyone to participate in consultations between the BLM and a permittee or lessee regarding grazing management.

The New Mexico Farm and Livestock Bureau wants the BLM to eliminate the "full force and effect" provision.

Section 4120.5-1 paragraph (c) [It is probably intended to reference Section 5120.5-2]

The PLC wants the BLM to add a paragraph (c) to Section 4120.5-1 as follows:

> "BLM will participate with state, local, or county officials who establish grazing boards under their jurisdiction and, if requested, provide periodic opportunities for members of these grazing boards to review and provide comments to BLM on range improvement and allotment management plan programs within their area of jurisdiction."

The NCBA and PLC asked the BLM to amend the conversion ratio for sheep from 5:1 to 7:1 when billing for AUMs. They comment that the 5:1 ratio for sheep is based on data collected in Utah between 1949 and 1967. By 1991, and later in 1995, new standards were published that showed a higher ratio for sheep AUMs would be

appropriate.

The NCBA and PLC commented that their review of BLM's grazing decisions over the past 10 years shows little actual data from "state of the art" rangeland studies. They also believe the IBLA has incorrectly applied the burden of proof to the appellant instead of the BLM which, they assert, is required by the Administrative Procedure Act. They comment that when decisions are not suspended, the permittee or lessee could be put out of business while the BLM is pending a final disposition.

The NCBA and PLC comment that the BLM should revise the language at Section 4160.3, Full Force and Effect Decisions & Petitions for Stay of Decisions, to read as follows:

"When a permittee or lessee generates a timely appeal in response to a BLM decision, that decision will not be effective pending a final agency decision following a hearing on the record. While the appeal is pending the terms and conditions of the existing or prior permit will be in effect."

The NCBA and PLC comment that the BLM should add the following language to Section 4160, Hearings and Appeals:

> "If BLM can show sufficient justification to determine that the authorized grazing use is contributing to irreparable resource damage, BLM will consult with the permittee or lessee, and the state having responsibility over those lands and other land owners. BLM may then declare and emergency and place the decision in effect before the hearing or final administrative decision. The decision should be effective for the 30-day period provided for filing an appeal.
>
> Situations that justify declaring an emergency would include the following considerations:
>
> (i) Relative harm to the parties if the decision is effective pending an appeal
>
> (ii) The likelihood of BLM's success on the merits
>
> (iii) The likelihood of immediate and irreparable harm if the decision is not effective pending appeal
>
> (iv) Does the public interest favor placing the decision in effect pending appeal?"

Section 4130.1-1, Filing applications. The NCBA and PLC asked the BLM to amend this section, which it refers to as "Authorizing Grazing Use" to read as follows:

> "A positive response from a permittee or lessee to BLM's offer of an annual grazing license in the last year of a multiyear term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the present permit or lease shall be considered by the BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal offered to him or her by the BLM, the action of an appeal shall be considered an application for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated."

Section 4130.6-1, Exchange of Use. The NCBA and PLC want the BLM to insert

the following language into §4130.6-1:

> "BLM will calculate the total allotment/lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by person qualified as professional rangeland managers." They also ask that the phrase " . . . in the same allotment" be removed from the existing regulations in this same section.

Section 4130.1-2, Conflicting Applications. The NCBA and PLC asked that the BLM remove the following language in paragraph (d) of Section 4130.1-2:

> "Public ingress or egress across privately owned or controlled land to public land should be removed as consideration in allocating AUM."

The NCBA and PLC commented that the preceding existing language constitutes "blackmail" because it allocates Federal forage to applicants for that forage. The group commented that it is irrelevant whether a person will now or in the future grant public access to private lands because it is related to whether or not that person is the best steward of Federal forage.

Section 4180, Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. The NCBA and PLC asked the BLM to amend this section by transferring the entire Section 4180 to BLM's Planning Regulations and transferring authority to the BLM. They commented that Section 4180 directs the BLM to conduct multiple-use planning exercises at the watershed level and is intended to guide the BLM in conducting on-the-ground livestock management activities, but the regulations do not provide those management directives. They also want the BLM to rewrite the Planning regulations.

The NCBA and PLC asked the BLM to address monitoring by renaming Section 4180.2 "Monitoring" and developing language to develop a scientifically based short- and long-term field-level monitoring program in consultation with and with participation from permittees and lessees.

The Western Watersheds Program commented that it knows of hundreds of grazing allotments that are failing the most minimal of environmental health measures because of grazing on BLM-administered lands.

A commenter said the BLM should remove requirements in paragraph (b) of 4180.1 because there are no field methods presently available to determine energy flow and nutrient cycling, and the BLM can't make an accurate determination based on these functions.

The County Commissioners of Chaves County in Roswell, New Mexico, asked the BLM to reverse the present Full Force and Effect provisions to the pre-1995 standards that allowed the permittee to exhaust all appeals before removing livestock from the allotment because the present regulations do not recognize due process, including a full disclosure of the facts related to the decision, equal representation, and the rights of the accused to be assumed innocent until proven guilty.

A commenter said the BLM should replace "interested public" with "affected interest" wherever it appears in the regulations. He stated that local BLM employees' workloads are horrendous because the BLM is asking people with radical agendas against multiple use to participate in the everyday BLM

activities. He stated that this detracts from the BLM's ability to manage the resources.

The Idaho Department of Fish and Game (IDFG) commented that designing grazing regulations that make it easier for permittees to voluntarily opt for nonuse or relinquish a permit will allow the BLM to spread remaining livestock over a larger area and reduce the number of animals grazing an allotment, thereby allowing the range to be rested or rehabilitated. The IDFG commented that this would benefit permittees, improve rangeland health, and improve fish and wildlife habitats.

The NCBA and PLC commented that the BLM should continue periodic evaluations of rangeland resources on existing locations in a way that ensures continuity over time, and the BLM should ensure that all monitoring data collected on BLM lands is made available in allotment files to use in evaluating trends in resource conditions over time.

The Public Lands Foundation commented that the key to BLM's successful rangeland management should be in their capacity to monitor changes in vegetation and soil conditions and make appropriate adjustments in use.

A commenter at the Reno scoping meetings said that the BLM needed to address noxious weeds, catastrophic wildfires, and improve basic monitoring. The commenter said the BLM is only considering protecting 10 percent to 15 percent of permittees who are either poor managers or unsuccessful at trying to make a living on public rangelands that are not suitable for livestock grazing. The commenter wants the BLM to develop incentives so that permittees who successfully manage grazing to meet land health objectives pay less. Permittees who fail to meet these objectives will pay more in the short term and lose their permits in the long term. The commenter said that the BLM needed to institute a voluntary buyout program for permittees who can't make a living on marginal rangeland.

The consortium of environmental and conservation groups commented that reverting to the pre-1995 policies is illegal because it prevents the BLM from fulfilling its obligations under FLPMA and is inconsistent with the agency's stated goal of conservation. It commented that the BLM should only restrict monitoring if the allotment is in nonuse or until the BLM can meet its monitoring objectives.

It recommended that the BLM reinstate Grazing Boards and provide them with these reports so they can be subjected to peer review. It also asked the BLM to require periodic reports, in consultation with the permittee, to determine whether the data from monitoring and field observations show that resource management objectives are being met.

The NCBA and PLC asked that the BLM develop a new policy, in consultation with livestock operators and land grant institutions, to consider how best to address resource management objectives for wildlife and T&E species, and effects from recreational users at the allotment level. It believes these objectives are important for short- and long-term monitoring programs that are founded in present and historical quantitative vegetative data having the technical ability to determine if resource objectives are being met.

The Animal Alliance opposed altering the administrative appeals process if it would be more difficult to sue than what is presently required by the Federal rules. It commented that the proposed rule would narrow the definition of "legally cognizable interests" and, in effect, reduce the public's ability to appeal grazing administration and policy

decisions.

Great Old Broads for Wilderness commented that BLM's fee formula should reflect present market rates for non-Federal grazing lands because the present grazing fee is 10 times less than the open market rate. It said this is a dereliction of duty by the agency.

The South Dakota Department of Game, Fish, and Parks commented that the BLM should expand its management objectives to include all its lands and consider monitoring as a means to assess the effects of management actions. The department also commented that if the BLM cannot adequately manage small tracts of public land, it should consider land exchanges as a way of creating larger and easier to manage allotments. The department commented that increased monitoring by the BLM could identify at-risk lands and prevent them from degrading to a state where they need extensive restoration.

The CBD commented that the BLM should delete Section 4130.8 from the regulations because the fee fails to track market rates for livestock. It commented that the BLM's fees are 10 times less than the average westwide market rental of unirrigated rangeland and that the BLM's present fee formula should be eliminated and replaced with a competitive bidding process.

A commenter said "drive-by" monitoring and monitoring only when a permittee or lessee is renewing a permit or lease are not sufficient. The commenter said grazing practices should be adjusted annually to ensure that the land is improving in condition and health. The commenter said that if the BLM does not have adequate resources to properly monitor an allotment, that allotment should not be used until adequate funds and resources are available to manage it. The commenter said the BLM should conduct an economic analysis of what constitutes a well-funded range conservation effort and use the information to inform Congress of the cost and effect of neglecting the public land.

An environmental group commented that the BLM should have authority to grant nonuse for an entire 10 years or longer if the resource needs that much time to recover and that the BLM should be able to do this without having to make land or resource management plan amendments. The group also commented that the BLM should consider allotment cancellations to be automatic revisions to the applicable land or resource management plan.

The CBD commented that the BLM should prohibit any ephemeral grazing on public lands.

A member of the Northern California Resource Advisory Council commented that the BLM must conduct effective monitoring to ensure that the goals of the management plan are being met.

The Sky Island Alliance commented that grazing permits and leases should be open to competitive bidding as follows:

Bids are for the fee paid per AUM of actual forage for that period of the permit or lease.

- Reserve price on permits should be no less that 50 percent of the present average of private market rental rates for that state according to the National Agricultural Statistics Service.
- The highest bid from a qualified stockowner establishes the fair market value for that permit.
- Incumbent permittees should be offered first option to renew at highest bid.
- If an incumbent declines, the bidding process is reopened until a willing

permittee is identified.

- No qualifying bids received would result in allotment cancellation and closure to grazing.

5.0 General comments on issues not addressed in the ANPR and NOI

The Northwest California Resource Advisory Council (NCRAC) commented that it was disappointed the Department did not consult with the RACs before the public release of the proposed changes in grazing regulations and that the criteria seems to be from the "top down" and, therefore, seems contrary to the Secretary's "Four C's" philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative.
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism for one interest group to the detriment of the general public and other stakeholders.
- Current grazing rules have been adjudicated and found in compliance with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said, "I do not like to see public lands and campgrounds full of cattle droppings."

A commenter stated that the BLM's present permit renewal process allows antigrazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM's management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple uses.

An environmental group commented that the BLM should modify existing regulations so that cancellations by the BLM are considered automatic revisions to the applicable land or resource management plans. It stated that the BLM should have authority to grant nonuse, until resource conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although it manages ranching properties in 11 western states, it can't comment on the considered changes until the specifics of any changes the BLM is considering are made known. The Conservancy commented that it opposes any changes that would restrict organizations with multiple interests, such as theirs, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that the BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The PLF commented that the 1995 effort was a huge and costly undertaking and asked why the BLM was creating a new grazing policy so soon. The PLF stated it had followed the BLM's implementation of the 1995 rules

and was unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision, stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were deemed necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture "sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt." The department said that "most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, and increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provide little or no positive effects on the natural resources, livestock industry, or any other public multiple use."

The Nevada Department of Agriculture also asked the BLM to allow only trained BLM employees to perform environmental monitoring and to not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of Billings, Montana, asked why the BLM is drafting new grazing regulations so soon after the huge effort undertaken in 1995. It commented that the proposed changes would result in the "old system of private control by the privileged over the general publics enjoyment of healthy functioning public lands." It asked the BLM to clarify the following elements of the Secretary's Four C's concept in the EIS:

- With whom is the BLM consulting?
- What is the consultation about?
- What does the BLM mean by "community-based conservation?"
- What is the role of the general taxpaying public in "community-based conservation?"
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that the BLM must provide definitions for the following new definitions used in BLM's Press Release, and include them in any proposed regulations:

- Sustainable rangelands
- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want the BLM to add the following provisions to any proposed changes to the regulations:

Section 4130.1-1, Filing applications. The NCBA and PLC asked the BLM to amend this section, which it refers to as "Authorizing Grazing Use" to read as follows:

> "A positive response from a permittee or lessee to BLM's offer of an annual

> grazing license in the last year of a multiyear term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the current permit or lease shall be considered by the BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal offered to him or her by the BLM, the action of an appeal shall be considered an application for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated."

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